Hyatt Regency New Orleans *and* United Labor Unions, Local 100. Case 15-CA-8351-2

February 26, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on October 13, 1981, by United Labor Unions, Local 100, herein called the Union, and duly served on Hyatt Regency New Orleans, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 15, issued a complaint on November 16, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on September 21, 1981, following a Board election in Case 15-RC-6771,[1] the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about October 8, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. Further, since on or about October 8, 1981, Respondent has failed and refused to supply information to the Union regarding, *inter alia*, the names, addresses, telephone numbers, dates of hire, job classifications and rates of pay of all bargaining unit employees; a breakdown of the bargaining unit by departments and job classifications; descriptions of all fringe benefits including but not limited to vacations, holidays, leaves of absence, sick leave, bereavement pay, jury duty pay, sickness and accident insurance, and pensions; description of overtime policies including daily overtime pay, conditions for refusal of overtime, and division of overtime; description of layoff and recall policies; description of seniority policies, including their application to benefits; description of disciplinary policies; and all work rules. On November 27, 1981, Respondent filed its answer to the complaint denying all of the allegations in the complaint.

On December 14, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 17, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed separate responses to the Motion for Summary Judgment and the Notice To Show Cause. The General Counsel also filed a supplement to his summary judgment motion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and its responses, Respondent contests, *inter alia*, the appropriateness of the unit and the validity of the Union's certification. In his Motion for Summary Judgment, counsel for the General Counsel alleges that Respondent seeks to relitigate issues considered in the underlying representation case. We agree.

Our review of the record in this case, including the record in Case 15-RC-6771, reveals that, after a hearing, the Regional Director issued a Decision and Direction of Election on May 26, 1981.[2] At the hearing, Respondent's attorney stated that the jurisdictional stipulation entered into in 1977 at the representation hearing concerning the New Orleans, Louisiana, facility was still true and accurate. Based on this stipulation, the Regional Director found that Respondent met the jurisdictional standards of the Board. The Regional Director further found that the appropriate unit consisted of all full-time and regular part-time employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations and security personnel, professional employees, guards, and supervisors as defined in the Act.

On June 8, Respondent filed a petition for review of the Regional Director's Decision and Direction of Election arguing that the Board had vio-

[1] Official notice is taken of the record in the representation proceeding, Case 15-RC-6771, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] All dates are in 1981, unless otherwise indicated.

lated its own administrative procedures and rules, and had failed to set forth an hourly formula to determine whether certain employees shared a sufficient community of interest to warrant their inclusion in the unit.

On June 19, the Board stayed the representation election and remanded the case to the Regional Director with instructions to issue a supplemental decision setting forth an eligibility formula for regular part-time employees, casual employees, and on-call employees. On June 30, a second hearing was held to adduce further evidence and, on July 13, the Regional Director issued a Supplemental Decision and Direction of Election in which it was detemined that Respondent does not employ any part-time, casual, or on-call employees in the appropriate unit. In the Supplemental Decision, the Regional Director found the appropriate unit consisted of all regular employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting sales, personnel, public relations and security personnel, professional employees, confidential employees, guards, and supervisors as defined in the Act.

On July 28, Respondent filed a timely request for review of the Regional Director's Supplemental Decision and Direction of Election. The request for review was denied on August 4. In accordance with the Supplemental Decision and Direction of Election, an election was conducted on August 11, and the tally of ballots furnished the parties after the election showed 134 votes cast for, and 57 against, the Union. There were 17 challenged ballots, an insufficient number to affect the results. Respondent filed timely objections to the election arguing that certain employees who had been included in the unit in a 1977 representation case involving the same parties should have been allowed to cast challenged ballots and that employees who had been terminated by it prior to the election were wrongfully permitted to vote. After an investigation, the Regional Director on September 21 issued his Supplemental Decision and Certification of Representative in which he overruled the objections in their entirety and certified the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit. Respondent filed a timely request for review of the Regional Director's Supplemental Decision and Certification of Representative. The request for review was denied on December 18 by telegraphic order of the Board.

On September 28, the Union, by letter, requested, and is continuing to request, Respondent to provide certain information regarding the unit employees for purposes of bargaining including the names, addresses, telephone numbers, dates of hire, job classifications, and rates of pay of all bargaining unit employees; a breakdown of the bargaining unit by departments and job classifications; descriptions of all fringe benefits including but not limited to vacations, holidays, leaves of absence, sick leave, bereavement pay, jury duty pay, sickness and accident insurance, and pensions; description of overtime policies including daily overtime pay, conditions for refusal of overtime, and division of overtime; description of layoff and recall policies; description of seniority policies, including their application to benefits; description of disciplinary policies; and all work rules. The Union further requested Respondent to bargain collectively with it as the collective-bargaining representative of the unit employees.

In its answer to the complaint in this case, Respondent denies, *inter alia*, its jurisdictional standing, the Union's status as a labor organization, and its unlawful refusal to bargain with the Union. However, Respondent admitted that it met the Board's jurisdictional requirements in the underlying representation proceeding. Further, the Union's status was contested in said representation proceeding and the Regional Director found that the Union is a labor organization within the meaning of the Act. Respondent offers nothing to controvert this finding. With respect to its denying that it has refused to bargain with the Union, attached to the General Counsel's Motion for Summary Judgment is a copy of Respondent's letter to the Union, dated October 8, 1981, stating that the Union's request for bargaining and for information relevant to bargaining was inappropriate because the issue of the Union's certification was still before the Board. Respondent has submitted nothing to controvert this document. Further, it is apparent from Respondent's response to the Motion for Summary Judgment and the Notice To Show Cause that it desires to test the appropriateness of the unit and the resulting representation case. Accordingly, we deem the allegations of the complaint concerning Respondent's refusal to bargain to be true. See *Georgia, Florida, Alabama Transportation Company*, 228 NLRB 1321 (1977). Thus, it appears that Respondent is attempting to raise issues in the present case which were, or could have been, raised in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled

to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding.[4] We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.[5]

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is and has been at all times material herein a California corporation which operates a hotel located in New Orleans, Louisiana, where it provides food, lodging, and related hotel services to transient guests. During the 12 months preceding November 16, 1981, a representative period, Respondent derived gross revenues in excess of $500,000, and purchased and received goods and materials valued in excess of $50,000 directly from points located outside the State of Louisiana.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Labor Unions, Local 100, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All regular employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations and security personnel, professional employees, confidential employees, guards, and supervisors as defined in the Act.

2. The certification

On August 11, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 15, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on September 21, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about September 28, 1981, and at all times thereafter, the Union has requested Respondent to provide certain requested information for purposes of bargaining including the names, addresses, telephone numbers, dates of hire, job classifications, and rates of pay of all bargaining unit employees; a breakdown of the bargaining unit by departments and job classifications; descriptions of all fringe benefits including but not limited to vacations, holidays, leaves of absence, sick leave, bereavement pay, jury duty pay, sickness and accident insurance, and pensions; description of overtime policies including daily overtime pay, conditions for refusal to overtime, and division of overtime; description of layoff and recall policies; description of seniority policies, including their appli-

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[3] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[4] Respondent has requested oral argument. This request is hereby denied as the record, the pleadings, and the briefs adequately present the issues and the positions of the parties.

[5] In its response to the order transferring the proceeding to the Board and Notice To Show Cause, Respondent contends that the order transferring the proceeding to the Board and Notice To Show Cause is void *ab initio* because it issued on December 17, 1981, and the Board's denial of the Respondent's request for review of the Regional Director's Supplemental Decision and Certification of Election in the underlying representation case did not issue until December 18. We find this contention to be without merit. The order and notice to which Respondent refers merely transferred and continued the proceeding before the Board. The Board did not consider this case until after Respondent's request for review was denied. We further note that Respondent presents no argument that it has been prejudiced by the fact that the Board denied its request for review 1 day after the order and notice issued in this case.

Respondent has also requested that the full Board reconsider the denial of Respondent's request for review of the Regional Director's Supplemental Decision and Certification of Representative. This request is denied. It is the policy of the Board for the same panel which decided a case to pass upon it for reconsideration and for the full Board to consider such a motion only if the panel refers it to the full Board. *Florida Steel Corporation*, 224 NLRB 1033 (1976); *Enterprise Industrial Piping Company*, 118 NLRB 1 (1957).

cation to benefits; description disciplinary policies; and all work rules; and to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. The requested information is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees. Commencing on or about October 8, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to provide the requested information and to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since October 8, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in, and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Hyatt Regency New Orleans is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Labor Unions, Local 100, is a labor organization within the meaning of Section 2(5) of the Act.

3. All regular employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations and security personnel, professional employees, confidential employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 21, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 8, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By failing and refusing on or about October 8, 1981, and at all times thereafter, to supply information for the purposes of collective bargaining to the above-named labor organization regarding, *inter alia*, the names, addresses, telephone numbers, dates of hire, job classifications, and rates of pay of all bargaining unit employees; a breakdown of the bargaining unit by departments and job classifications; descriptions of all fringe benefits including but not limited to vacations, holidays, leaves of absence, sick leave, bereavement pay, jury duty pay, sickness and accident insurance, and pensions; description of overtime policies including daily overtime pay, conditions for refusal of overtime, and division of overtime; description of layoff and recall policies; description of seniority policies, including their application to benefits; description of disciplinary policies; and all work rules, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusals to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Hyatt Regency New Orleans, New Orleans, Louisiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Labor Unions, Local 100, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All regular employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel public relations and security personnel, professional employees, confidential employees, guards, and supervisors as defined in the Act.

(b) Failing and refusing to supply requested information for the purposes of collective bargaining to United Labor Unions, Local 100, regarding, *inter alia*, the names, addresses, telephone numbers, dates of hire, job classifications, and rates of pay of all bargaining unit employees; a breakdown of the bargaining unit by departments and job classifications; descriptions of all fringe benefits including but not limited to vacations, holidays, leaves of absence, sick leave, bereavement pay, jury duty pay, sickness and accident insurance, and pensions; description of overtime policies including daily overtime pay, conditions for refusal of overtime, and division of overtime; description of layoff and recall policies; description of seniority policies, including their application to benefits; description of disciplinary policies; and all work rules.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, supply information to the above-named labor organization for the purposes of collective bargaining as the exclusive representative of all employees in the aforesaid appropriate unit.

(c) Post at the Hyatt Regency New Orleans copies of the attached notice marked "Appendix."[6] Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[6] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Labor Unions, Local 100, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT fail and refuse to supply requested information for the purposes of collective bargaining to United Labor Unions, Local 100, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employ-

ees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All regular employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations and security personnel, professional employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL, upon request, supply information for the purposes of collective bargaining to the above-named Union, as the exclusive representative of the employees in the bargaining unit described above.

HYATT REGENCY NEW ORLEANS